THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.26792 of 1999

Dated : 02.07.2007

Between:

Kondru John S/o late Velugondaiah and others.

..... PETITIONERS

And:

Government of Andhra Pradesh, rep., by its Secretary, Panchayat Raj & Rural Development, Secretariat, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.26792 of 1999

ORDER:

Petitioners claim to be owners of houses bearing Door Nos.8-4,8-5 and 8-6, respectively, situated at Kanigiri Gram Panchayat in Prakasam District, and they alleged to have been in possession of the same since fifty years. A portion of their houses and the houses of other residents of Kanigiri, are alleged to be demolished by the respondents for the purpose of road widening, without following due process of law. Questioning the same, a batch of writ petitions, being W.P.No.18736 of 1997 and batch, were filed, in which a Division Bench of this Court appointed a Commissioner to enquire into the illegal demolitions of structures by the Government wings. The Commissioner, after enquiry,

submitted a report stating that the demolition of structures is without proper compliance of law. Thereafter, respondents kept quite for a period of two years and again, two days prior to filing of this writ petition, respondents 2 and 3 alleged to have informed the petitioners that they would take possession of the demolished portions of their houses. Hence, this writ petition declaring the action of the respondents in seeking to dispossess the petitioners from a portion of their houses or the land appurtenant thereto, without following due process of law as arbitrary and illegal.

A detailed counter-affidavit is filed on behalf of the respondents. The respondents do not deny the possession of the petitioners, but they state that their possession is unauthorized and they have encroached the Government land and made constructions illegally.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

As the possession of the petitioners is not denied by the respondents, it shall be construed that the petitioners are in possession of the land in question for the last fifty years, as contended by them. Even though the land in question belongs to Government and the petitioners are encroachers, the respondents have to initiate proceedings under the Andhra Pradesh Land Encroachment Act, 1905 (for short “the Act”), and issue notice under Section 7 of the Act. As the respondents are trying to dispossess the petitioners without recourse to any law, the same can definitely be said to be not only arbitrary but also illegal.

Accordingly, the writ petition is allowed and a Mandamus is issued directing the respondents not to dispossess the petitioners from the houses bearing Door Nos.8-4,8-5 and 8-6 situated at Kanigiri Gram Panchayat in Prakasam District, and the land appurtenant thereto, without following due process of law. There shall be no order as to costs.

02.07.2007

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